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April 8, 2002

**BY HAND DELIVERY**

Jim McKinney, Project Manager  
California Energy Commission  
1516 9th Street  
Sacramento, CA 95814

<b>DOCKET</b> <b>01-AFC-20</b>
<b>DATE</b> APR 08 2002
<b>RECD.</b> APR 08 2002

Re: Avenal Energy Center (Docket No. 01-AFC-20): Data Requests to  
Commission Staff  
Our Ref. : 32291.00004

Dear Mr. McKinney:

Pursuant to Title 20, California Code of Regulations, section 1716, Duke Energy Avenal, LLC ("Duke Avenal") requests that the California Energy Commission Staff ("Commission Staff") supply the information specified in the enclosed data requests.

Soil and water resources are addressed in the following two data requests. The information requested is necessary to understand Commission Staff's application of State Water Resources Control Board Policy 75-58 and California Water Code Sections 13550 and 13551 to the project.

Written responses to the enclosed data requests are due to Duke Avenal by May 8, 2002 or at such a later date as may be agreed upon by the Commission Staff and Duke Avenal.

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If you are unable to provide the information requested in the data requests or object to providing it, you must contact the committee assigned to the project, and Duke Avenal, within 10 days of receiving these requests stating your reason for delay or objections.

If you have any questions regarding the enclosed data requests, please call Jane Luckhardt at (916) 441-0131.

Very truly yours,

DOWNEY, BRAND, SEYMOUR & ROHWER LLP



Craig T. Gottwals

cc: Docket Office (original plus 13, 1 for endorsed return)  
Lisa DeCarlo, Staff Counsel  
Mark A. Seedall, Duke Avenal  
Robert E. Cochran, Duke Avenal  
Barbara Brenner, Ellison, Schneider and Harris  
Service List (01-AFC-20)

**AVENAL ENERGY PROJECT**  
**Applicant's Data Requests of Commission Staff**  
**(01-AFC-20)**

**Technical Area: Soil and Water**

**BACKGROUND**

*Evaluation of Alternative Water Sources*

Commission Staff has indicated both in data requests on soil and water and in the workshop on March 6, 2002, that they believe State Water Resources Control Board Policy 75-58 applies to this project. Commission Staff also indicated in the March 6 workshop that California Water Code Sections 13550 and 13551 apply to the cooling water proposed for use at this project. In order to understand Commission Staff's application of the policy and statute to this case, Applicant requests additional information.

**DATA REQUESTS**

1. California Water Code Sections 13550 and 13551 address potable domestic water. The water proposed for project cooling, however, is not a potable water supply. Please explain why you contend that these statutes apply to the water proposed for project cooling.
2. Commission Staff relies upon State Water Resources Control Board Policy 75-58 as justification for requesting an extensive alternative water supply analysis from the Applicant. Please provide a discussion of Commission Staff's interpretation of this policy, specifically how it applies to this project. Please address each of the following issues.
  - a) Please describe how this policy applies to pre-1914 water rights.
  - b) Please explain on what basis the Commission Staff believes that the State Water Resources Control Board has jurisdiction over the proposed cooling water for this project.
  - c) If Commission Staff believes that the State Water Resources Control Board must issue a permit or license to appropriate the proposed cooling water, please describe why.

STATE OF CALIFORNIA

Energy Resources Conservation  
and Development Commission

In the Matter of:	)	Docket No. 01-AFC-20
	)	
Application for Certification for the	)	PROOF OF SERVICE
AVENAL ENERGY PROJECT	)	
_____	)	

I, Lois Navarrot, declare that on April 8, 2002, I deposited copies of the attached **APPLICANT'S DATA REQUESTS OF COMMISSION STAFF** in the United States mail at Sacramento, California, with first class postage thereon fully prepaid and addressed to the following:

CALIFORNIA ENERGY COMMISSION (original plus 12)  
DOCKET UNIT, MS-4  
**Attn: Docket No. 01-AFC-20**  
1516 Ninth Street  
Sacramento, CA 95814-5512  
E-mail: [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

APPLICANT

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CURE  
c/o Mark Joseph  
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& Cardoza  
651 Gateway Blvd., Suite 900  
So. San Francisco, CA 94080

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, reading "Lois Navarrot", is written over a horizontal line.

Lois Navarrot